



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

99/358,280 07/21/99 UTTER

S MISTY-52064

024201 QM02/0117  
FULWIDER PATTON LEE & UTECHT, LLP  
HOWARD HUGHES CENTER  
6060 CENTER DRIVE  
TENTH FLOOR  
LOS ANGELES CA 90045

EXAMINER
----------

KIM, C ART UNIT	PAPER NUMBER
--------------------	--------------

3752  
DATE MAILED:

01/17/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/358,280

Applicant(s)

Utter

Examiner  
Christ pher S. Kim

Group Art Unit  
3752



☒ Responsive to communication(s) filed on 17 Oct 2000

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 7-17 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 7-17 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on 21 Jul 1999 is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on 17 Oct 2000 is ☒ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3752

## **DETAILED ACTION**

### ***Response to Amendment***

1. Amendment file October 17, 2000 is acknowledged.
2. The indicated allowability of claims 10 and 17 is withdrawn in view of the newly discovered reference(s) to Cushing. Rejections based on the newly cited reference(s) follow.

### ***Drawings***

3. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on October 17, 2000 have been approved.
4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "fluid connector" recited in claim 14 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: claim 14 recites a "fluid connector".

Art Unit: 3752

***Claim Objections***

6. Claims 5 and 14 are objected to because of the following informalities: in claim 5, line 5, "a water outlet" should read --the water outlet--; in claim 14, line 1, "said fluid connector" should read --a fluid connector--; in claim 14, line 2, "distal" should read --proximal--. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 6 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6 and 13 recite "means for attaching". Is this different from the "clip" recited in claims 5 and 11?

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3752

10. Claims 5, 6 and 8 (as best understood) are rejected under 35 U.S.C. 102(b) as being anticipated by Cushing.

Cushing discloses an apparatus comprising: a pressurizable container 16; a first water conduit 72; means 40 for pressurizing the container; a second water conduit 18, 51; a spray nozzle 20; a clip 24; a restrictive valve 46; and a means for sealing 70. The recitation of intended use of the clip “for attaching said second water conduit to an article of clothing of the person” has been given no patentable weight.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5-8 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing in view of Shurnick et al.

Cushing discloses an apparatus comprising: a pressurizable container 16; a first water conduit 72; means 40 for pressurizing the container; a second water conduit 18, 51; a spray nozzle 20; a clip 24; a restrictive valve 46; and a means for sealing 70. Cushing differs from what is claimed in the means secured to the misting apparatus for attaching the misting apparatus to a person's waist and the clip for attaching the second water conduit to an article of clothing of a

Art Unit: 3752

person. Shurnick et al. discloses a means 27 for securing a bottle to a part of a person's body (waist shown in figure 1). Shurnick et al. also discloses, in column 3, lines 57-63 a clip for the second water conduit for use with the person's clothing. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced cage 30 and clip 24 of Cushing with the means 27 and clip of Shurnick et al. to attach the device of Cushing to a runner.

13. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing in view of Norman.

Cushing discloses the limitations of the claimed invention with the exception of the manual piston type pump. Norman discloses a piston pump 7; 11, 12, 13, 17. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Norman to provide faster compression.

14. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing.

Cushing discloses the limitations of the claimed invention with the exception of ice. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added ice to the container of Cushing to dispense cold water.

15. Claims 11-17 (as best understood) are rejected under 35 U.S.C. 103(a) as being unpatentable over Cushing in view of Beauchamp and Roueche et al.

With respect to claims 11-16,

Cushing discloses a system comprising: a pressurizable container 16; a first water conduit 72; means 40 for pressurizing the container; a second water conduit 18, 51; a spray

Art Unit: 3752

nozzle 20; a clip 24; a valve 46; a fluid connector 36; a means for sealing 70. The recitation of intended use of the clip “for attaching said second water conduit to an article of clothing of the person” has given no patentable weight. Cushing differs from what is being claimed in the means for pressurizing the container mounted to the inlet and the means for securing the container to the person.

Roueché et al. discloses, in figure 13, a piston pump mounted to an inlet cap 118. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the bellows pump of Cushing with the piston pump of Roueché et al. to provide faster compression.

Beauchamp discloses a means 27, 28 for securing a container 10 to a person comprising a belt 28. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have replaced the cage 30 of Cushing with the means 27, 28 of Beauchamp to attach the device of Cushing to a person for use while not on a bicycle.

With respect to claim 17,

Cushing in view of Beauchamp and Roueché et al. discloses the limitations of the claimed invention with the exception of ice. It would have been obvious to a person having ordinary skill in the art at the time of the invention to have added ice to the container of Cushing in view of Beauchamp and Roueché et al. to dispense cold water.

Art Unit: 3752

***Response to Arguments***

16. Applicant's arguments with respect to claims 5-17 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Anderson et al. discloses a clip. Davis discloses a pump apparatus.

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.




Art Unit: 3752

19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher S. Kim whose telephone number is (703) 308-8336. The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for this Group is (703) 308-7766.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.



David A. Scherbel  
Supervisory Patent Examiner  
Group 3700

CK

January 15, 2001